

18-109268

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

**Kimberly Lynn Wentland dba Thairapy
by Kimberly asf Glance Salon LLC**

DEBTOR

Wells Fargo Bank, N.A.

MOVANT

CASE NO. 22-60060

CHAPTER 13

**NOTICE OF HEARING AND MOTION FOR OBJECTION
TO CONFIRMATION OF CHAPTER 13 PLAN**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Wells Fargo Bank, N.A. ("Movant"), by its undersigned attorney, moves the Court for relief requested below and gives Notice of Hearing within.
2. This objection is filed pursuant to 11 U.S.C. §§ 1322 and 1325, Federal Rules of Bankruptcy Procedure Rules 3015(f) and 9014, and Local Rules 3015-3, 3020-1 and 3020-3. Movant requests that this Court enter an order denying confirmation of the Debtor's Chapter 13 Plan.
3. The Court will hold a Hearing on this Motion at 10:00 AM, on April 26, 2022, in Courtroom No. 2, at Edward J. Devitt United States Courthouse and Federal Building, 2nd Floor, 118 South Mill Street, Fergus Falls, Minnesota 56537, or as soon thereafter as counsel can be heard.
4. Any response to this motion must be filed and delivered no later than April 25, 2022 at 10:00 AM on all parties required to be served pursuant to Local Rule 9013-3, United States Bankruptcy Court, District of Minnesota, which is 24 hours before the time set for the hearing, or filed and served by mail no later than April 22, 2022 which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

5. This Court has jurisdiction over this Motion proceeding under 28 U.S.C. §§ 157(a) and 1334(a), Federal Rules of Bankruptcy Procedure Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 13 case was filed on February 23, 2022. This case is now pending in this Court.
6. On August 2, 2011, Kimberly L. Wentland (hereinafter “Debtor(s)”), made, executed and delivered to Wells Fargo Bank, N.A. a Note (hereinafter referred to as the “Note”), in the original principal amount of \$73,098.00 bearing interest from the date thereof at the rate of 4.875% per annum until paid. A redacted copy of the Note is attached hereto as Exhibit A.
7. On August 2, 2011, to secure the payment of the Note, Kimberly L. Wentland, a single person, executed and delivered to Wells Fargo Bank, N.A. a Mortgage (hereinafter the “Mortgage”), mortgaging and conveying certain real estate in Stearns County, Minnesota, legally described as follows:

Lot Eight (8) and the West 62.5 feet of Lot Seven (7) of Original Townsite of Opole, Stearns County, Minnesota

which property has an address of: 12439 Co Rd 17, Holdingford, MN 56340. The Mortgage was filed for record in the office of the Recorder, County of Stearns, on August 11, 2011, as Document Number A1348447. A redacted copy of the Mortgage is attached hereto as Exhibit B.

8. The Debtor filed a Chapter 13 Plan on February 23, 2022. The Debtor lists Movant in Part 7, Claims in Default with an interest rate of 0%. Movant should be listed in Part 6 as Movant has a security interest in real property that is the debtor’s principal residence.
9. In its current form, the Plan purports to modify Movant’s rights under the Mortgage, contrary to the provisions of 11 U.S.C. § 1322(b)(2). As such, the Movant objects to the Plan in its current form.
10. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant prays:

1. For an Order denying confirmation of the Debtor's proposed Chapter 13 plan and requiring the Debtor to modify said plan in a timely manner; or, in the alternative, dismissing this case.
2. For such other and further relief as the Court finds just and proper.

Dated 3/7/2022

LOGS Legal Group LLP

Signed: /s/ Joseph M. Rossman
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

**Kimberly Lynn Wentland dba Thairapy
by Kimberly asf Second Glance Salon
LLC**

DEBTOR

CASE NO. 22-60060

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MEMORANDUM OF LAW

Wells Fargo Bank, N.A. ("Movant"), submits this memorandum of law in support of its motion for objection to confirmation of Chapter 13 Plan in the above-entitled matter.

PROCEDURAL HISTORY

This Chapter 13 case was filed by the Debtor on February 23, 2022. The Debtor listed the property in schedule A with a value of \$178,200.00. The Debtor claimed the property exempt pursuant to 11 U.S.C. § 522 (d)(1) or 11 U.S.C. § 522 (d)(5). The Debtor filed a Chapter 13 Plan on February 23, 2022, listing Movant in Part 7 under "Claims in Default".

FACTS

The Debtor, Kimberly Lynn Wentland, executed a Note and Mortgage in favor of Wells Fargo Bank, N.A. on or about August 2, 2011, in the amount of \$73,098.00. As of February 23, 2022 the estimated pre-petition arrearage is \$39,509.95 and the Note has a interest rate of 4.875%.

ARGUMENT

The Debtor's Plan cannot be confirmed as proposed. Section 1322(b)(2) of the Bankruptcy Code provides as follows:

(b) Subject to subsection (a) and (c) of this Section, the plan may ---...

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence...

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due; ...

11 U.S.C. § 1322(b). Further, under Section 1325(a),

(a) except as provided in subsection (b), the court shall confirm a plan if-

- (1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;
- (3) The plan has been proposed in good faith and not by any means forbidden by law; ...
- (6) The debtor will be able to make all payments under the plan and to comply with the plan...

11 U.S.C. § 1325(a).

Movant is a secured creditor of the Debtor whose claim is secured only by the Debtor's principal residence at 12439 Co Rd 17, Holdingford, MN 56340. Movant will file a claim which will include \$39,509.95 in pre-petition arrears. The Debtor's Plan lists Movant's claim in Debtor's Chapter 13 Plan at ¶ 7 with an interest rate of 0%. As filed, the Plan purports to modify Movant's right to collect all amounts due and owing under the Mortgage contract, which is contrary to the provisions of 11 U.S.C. § 1322(b)(2). As such, the Movant objects to the Plan in its current form.

CONCLUSION

Movant is entitled to an order denying confirmation of the Debtor's proposed Chapter 13 Plan.

Dated: 3/7/2022_____

Respectfully submitted,
LOGS LEGAL GROUP LLP

Signed: /s/ Joseph M. Rossman
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**UNITED STATES BANKRUPTCY COURT
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IN RE:

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CASE NO. 22-60060

CHAPTER 13

ORDER DENYING CONFIRMATION OF PLAN

The above-entitled matter came for hearing on April 26, 2022, before Judge Michael E. Ridgway, United States Bankruptcy Judge for the District of Minnesota, upon the Motion of Wells Fargo Bank, N.A., for its objection to the confirmation of Chapter 13 plan. Appearances were as noted in the record.

Based on all the files, records and arguments of counsel;

IT IS ORDERED,

Confirmation of the Debtor's Chapter 13 Plan is denied.

Dated: _____

BY THE COURT:

Michael E. Ridgway
Chief United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

**Kimberly Lynn Wentland a/k/a Thairapy
by Kimberly a/k/a Second Glance Salon
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MOVANT'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, Movant, Wells Fargo Bank, N.A., by its undersigned counsel, states as follows:

1. Wells Fargo Bank, N.A. is a national banking association organized under the laws of the United States.
2. Wells Fargo Bank, N.A. is a wholly owned subsidiary of and owned 100% by WFC Holdings, LLC.
3. WFC Holdings, LLC is owned 100% by Wells Fargo & Company, which is a publicly traded company.
4. No publicly held company owns 10% or more of Wells Fargo & Company stock.

Dated: 3/7/2022

LOGS Legal Group LLP

Signed: /s/ Joseph M. Rossman

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, that on March 8, 2022, I mailed U.S. Mail and CM/ECF emailed copies of the Notice of Hearing and Motion for Objection to Confirmation of Chapter 13 Plan, Memorandum of Law and Proposed Order for Denying Confirmation upon the following interested parties at their last known address:

Served Via U.S. Mail

Kimberly Lynn Wentland a/k/a Thairapy by Kimberly a/k/a Second Glance Salon LLC
12439 County Road 17
Holdingford, MN 56340

Additional Copy(s) served electronically through the Court's ECF System or by first class U.S. mail postage addressed to:

William P. Kain, Kain & Henahan, LLC
703 West St Germaine Street
PO Box 1537
Saint Cloud, MN 56302

Kyle L. Carlson
PO Box 519
Barnesville, MN 56514

US Trustee
1015 US Courthouse
300 S 4th Street
Minneapolis, MN 55415

/s/ Ivy L Brown